IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5234 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAKSHA WIDOW OF DURMIL SATYENDRA JHAVERI

Versus

N M. SHSH, OCTROI INSPECTOR

Appearance:

1. Criminal Misc.Application No. 5234 of 1997

MR MUKESH R SHAH for Petitioner No. 1

..... for Respondent No. 1-2

MR PR ABICHANDANI, APP for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/03/2003

ORAL JUDGEMENT

The present petitioner, who is the widow of

Durmil Satyendra Jhaveri having factory known as Vijay Industries situated at Odhav, against whom a complaint was filed by the complainant, Octroi Inspector, Ahmedabad Municipal Corporation, in the Court of learned Metropolitan Magistrate, Court No.8, Ahmedabad, on 8-4-1993 which has been registered as Criminal Case No.14234 of 1993, has filed this petition for quashing the process issued by the learned Magistrate in said criminal case.

2. Heard learned counsel for the petitioner, Mr.M.R.Shah and learned APP for the respondent No.3, Mr.P.R.Abichandani.

3. It is submitted by the learned counsel for the petitioner that during the course of trial, since the person attending the court on behalf of Vijay Industries expired on 1-4-1997, summons issued by the learned Metropolitan Magistrate to be served upon Vijay Industries appeared to have served at the address of the petitioner. In pursuance of that, widow of late Shri Durmil Satyendra Jhaveri went to the Court and returned the summons with the application annexed as Annexure-B to this petition. On receiving the same, learned Metropolitan Magistrate vide order dated 12-9-1997 directed the widow to remain present in the Court while deciding application Exs.2 and 3 and her request for exemption from appearing in court was not considered by the learned Magistrate which is giving rise to file the present petition.

4. It appears that it is a technical offence wherein goods have been received by the Industry based on 'F" form but ultimately invoice has not been shown and account has not been settled with the Ahmedabad Municipal Corporation within a stipulated time which resulted in filing of criminal complaint. When widow of the deceased approached the Court returning with the process issued by the Court at the given address along with an application for exemption stating that she is not an accused in the case, the Court, instead of accepting the process and passing the order in exemption application, has directed her to remain present on every adjournments. Said approach of the learned Magistrate is not proper more particularly when she has been duly represented through advocate and, therefore, impugned order passed by the learned Magistrate is required to be quashed and set aside.

5. In view of the above, this petition is allowed. Process issued by the court below against the widow of

Durmil Satyendra Jhaveri in Criminal Case No.14234 of 1993 by the learned Metropolitan Magistrate, Ahmedabad, is quashed and set aside. Rule is made absolute.

6. Since this order has been passed looking to the peculiar facts and circumstances of this case, it should not be treated as precedent.

(R.P.DHOLAKIA,J.)

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